

MEETING REPORT

Bernhart's Park Joint Meeting

City-County-Muhlenberg Township-EPA

Wednesday, December 5, 2007

Council Chambers

Attending: J. Waltman, Vice President City Council; D. Sterner, City Council; M. Goodman-Hinnershitz, City Council; S. Marmarou, City Council; T. McMahon, Mayor City of Reading; L. Kelleher, City Clerk; C. Kanezo, Deputy City Clerk; L. Churchill, Managing Director; D. Hoag, Public Works; P. Hill, Blank Rome counsel for the City; J. Cohen, Blank Rome counsel for the City; T. Smith, Cong. Tim Holden's office; C. McPhedran, PennFuture counsel for the County; D. Erdman, Keystone E Sciences Group advisor for the County; J. Porembo, Senator Specter's Office; A. Mittelman, Senator Casey's Office; M. Scott, Berks County Commissioner; M. Kircher, Berks County; T. Gajewski, Berks County Commissioner; K. Dao, US EPA; P. Gotthold, US EPA; J. Krueger, Pa DEP; Cynthia Nadolski, EPA counsel; Susan Hodges, EPA counsel; Bob Collings, Exide counsel; Matthew Love, Exide Corporate; Paul Stratman, AGC; Kathy Horvath PaDEP, R. Golowski, Rep Santoni's Office

The meeting began at approximately 2:00 p.m. Councilor Waltman invited the representatives from Exide to summarize the details of the work plan that Exide submitted to EPA. Mr. Gotthold acknowledged the ultimate objective of all parties involved was to achieve a satisfactory remediation of all contaminated areas. Before discussing work plan specifics, Mr. Gotthold requested Mr. Dao provide a summary of the developments to the present point.

Mr. Dao summarized the key elements associated with the issue to date:

- In 2001, Exide conducted a comprehensive sampling investigation at Bernhart's Park. The sampling consisted of surface water, sediment and soil samples;
- EPA invited DEP to participate in the sampling and conduct their own surveys as required by DEP procedures and standards;

EPA Clarification:

EPA in collaboration with the PADEP conducted split sampling with Exide.

- Lead concentrations found in both surface water and soil were deemed to be above acceptable thresholds and the contamination in the soil will be cured through remediation;

EPA Clarification:

Surface water did not exceed drinking water standard for lead. Only soils contain elevated lead levels at the park above acceptable standards.

- A map displayed approximately 15 parcels outlined in green that have very high contamination levels and about 10 parcels outlined in yellow that have not been tested to date.

EPA Clarification:

The entire park was sampled in 2001. The green outlined areas are flat areas that contain elevated lead soil that EPA has proposed to cleanup to the residential standard of 650 parts per million for recreational use. The yellow outlined areas are heavily wooded, steeply sloped, and not easily accessible areas that contain elevated lead concentrations. These areas will be evaluated using the EPA Adult Lead Model.

- A Consent Order was authorized. The order compelled Exide to develop site specific remediation plans and submit those plans to EPA for approval;
- Soil remediation will be required for specific areas of the park. The human health and ecological risk assessments will determine which areas will require remediation.
- Cleanup of the Park property will occur in 2008, using a work plan based on the "Human Health Intermittent Exposure Analysis". Blood level monitoring – IEUBK – was used to determine the clean-up levels. Areas highlighted in green were found to have higher concentrations and more stringent level of remediation will be applied to these areas.

EPA Clarification:

The proposed cleanup work plan for recreational use at the park will be based on two risk assessments; the EPA Adult Lead model (apply to the heavily wooded, steeply sloped and not easily accessible areas) and the IEUBK model (apply to the flat and most frequent areas of the park). EPA proposed the residential cleanup standard of 650 ppm to the highlighted green areas.

Mayor McMahon questioned if EPA would be requiring remediation at the 600

ppm (parts per million) level as requested by the City? Mayor McMahon observed that the crucial issue related to what level EPA would require Exide to remediate Bernhart's Park. Mr. Waltman agreed that the entire issue could be settled if EPA was going to require Exide adhere to proper levels and standards of remediation. He added that the City has repeatedly expressed objections concerning the proposed level of remediation for over 10+ years.

EPA Clarification:

Mayor McMahon questioned if EPA will apply the 650 ppm cleanup level to the entire park and not just the flat areas highlighted in green.

Mr. Collings commented that Exide, when conducting independent assessments they used the IEUBK model, which establishes remediation criteria that is more stringent than criteria recommended by EPA. Mr. Dao disagreed with this statement, noting that criteria applied by Exide without the benefit of concurrent ecological and health risk assessments was insufficient.

Ms. Hill requested an explanation as to why different models were applied by EPA and Exide. Ms. Hill expressed concern that Exide and EPA were not following similar standards. Mr. Collings explained the Exide assessment was conducted independently of the EPA studies and was not required to adhere to specific standards. Mr. Collings maintained the study conducted by Exide was more comprehensive than the EPA study, less subject to variability and representative of higher standards. Mr. Dao repeated his previous disagreements as to the assumed superiority of the Exide assessment.

Mr. Gajewski requested a report on the proposed timeline. Mr. Gotthold indicated EPA and Exide were looking to begin remediation in the spring of 2008. Mr. Gotthold emphasized that EPA would hold Exide to the terms of the existing Consent Decree. Assuming a spring 2008 start date, total remediation is projected for completion by spring of 2009. He stated that a work plan will be submitted by Exide by January 2008. The work would be bid out with remediation construction to being in the Spring 2008.

EPA Clarification:

Exide is bind by the Consent Order and not Consent Decree. The entire residential cleanup is expected to be completed within three years.

Ms. Hoag noted the need for the City to review Exide's plan and be provided with opportunity to submit comments on the proposed plan and the remediation level. She questioned when the report would be released for the City's review. The EPA raised another topic and did not respond to the question.

EPA Clarification:

Mr. Gotthold acknowledged Ms. Hoag's comment but was unable to respond to her comment at this time.

Mr. Erdman questioned when access would be provided to the ecological work study/plan? The EPA raised another topic and did not respond.

EPA Clarification:

Mr. Gotthold acknowledged Mr. Erdman's comment but was unable to respond to his comment at this time.

At this point after receiving advice from the City's legal counsel, Mr. Waltman closed the meeting for negotiation purposes.

Mr. Scott questioned what methods Exide would employ to accomplish the remediation. Mr. Gotthold stated several methods exist:

- ☐ Soil excavation and replacement;
- ☐ Application of bio-solids to affected areas;
- ☐ Use of phosphorous and other chemical alternatives.

Mr. Dao stated effective remediation plans consider numerous site specific variables. These variables are used to determine the best method to accomplish stated objectives. Mr. Dao emphasized that the best remediation, in all cases, strikes the right balance between available methods and objectives.

Mr. Scott questioned if the EPA supported one form of remediation over others. Mr. Dao stated the EPA, per internal policy, does not endorse specific methods.

Ms. Hoag noted the EPA, per internal policy, will not release draft copies of their reports. Ms. Hoag questioned how interested parties could possibly hope to impact the outcome of the final report without first having an opportunity to question the draft. Mr. Gotthold replied that EPA takes public comment very seriously and concerned parties will always have opportunity to suggest amendments to final plans. Mr. Gotthold suggested the recent series of meetings are proof of how seriously EPA treats issues. However, they did not address the question on public access to EPA generated reports.

Mr. Collings commented on assessments produced by Exide in early 2000. These assessments indicated the entire area identified by EPA as requiring remediation satisfied practical safety standards. Exide, however, in an attempt to provide a

greater degree of comfort to the surrounding community agreed to conduct additional assessments and develop a plan to remediate the property. Mr. Collings assured all present that once the process is completed Bernharts Park and surrounding areas will be returned to their previous conditions. Until the last assessment is conducted, which will provide final risk figures, Exide will not comment on the details of the work plan. But he did assure those present of Exide's intent for a high level of remediation to the affected properties. He also explained the effect Exide's bankruptcy has had on this process.

EPA Clarification:

Mr. Collings states that once the cleanups are completed, Bernhart Park and the surrounding areas will be protective.

Mr. Waltman stated that contamination was first identified around 1990. He noted that the citizens of the City of Reading and the citizens of Berks County have been unable to use this center of recreation since the closure of Bernhart's Park in 1996. Mr. Waltman described the important role the park once played in the community. He noted that the park has fallen into some disrepair since its closure. Mr. Waltman, speaking for himself, stated the City has one primary objective and that is the satisfactory remediation of Bernhart's Park. He expressed the belief that this public park should be remediated to pre-contamination levels.

Ms. Hill inquired if the park areas highlighted in yellow are still in the discussion phase.

Mr. Collings did not address the question but raised another issue. He agreed that citizens should be able to enjoy Bernharts Park. Exide feels their independent sampling and analysis has gone beyond the requirements set forth by the EPA. Active blood testing of community residents has shown leads levels to be well within acceptable levels. The extra efforts on behalf of Exide are intended to assure the community that a danger to their health and well being does not exist. He stated that following the remediation, Exide plans to conduct a final risk assessment to assure the community and EPA that levels of contamination are well below average levels.

EPA Clarification:

There are no final risk assessments once the cleanups are completed. The completion of the soil cleanups will be protective of the community. EPA does not understand the context of the phrase "well below average levels"?

Ms. Cohen observed that Mr. Colling's comments implied that Bernhart's Park was perfectly safe under present circumstances. Mr. Collings agreed, noting it was the City of Reading that chose to close the park. Ms. Hoag questioned how, in the face of risk assessments that clearly show lead concentrations at levels requiring EPA mandated remediation, Exide could possibly claim the park was "risk free " and safe for recreation purposes.

Mr. Collings responded that risk assessment data compiled by Exide indicated lead level concentrations do not present a risk to human health and safety or the environment. Exide is in the process of presenting these results and holding discussions with EPA.

Ms. Hoag reported that the City has received direction from the Dam Safety Division of the PaDEP to drain Bernhart's Dam to allow an examination of the dam breast. The drainage of the lake will provide easy access to areas that contain the most concentrated levels of contamination.

Ms. Cohen agreed and added that due to the new residential development behind the uplands, children will have increased access to the trails that lead to the highly contaminated islands and hilly areas of the park.

Mr. Collings suggested installing a fence to screen entry. Ms. Kelleher questioned what fencing height would provide the proper deterrent to the unsupervised children who use the park.

Mr. Jones questioned if Mr. Krueger, from PaDEP has learned of the need for the City to expose the dam breast from the PADEP Dam Safety Division. Mr. Krueger promised to check on this request with the proper parties.

Ms. Hill requested an explanation regarding the reported dispute between Exide and EPA. Ms. Hill explained that understanding these disputes is essential to understanding the study ultimately conducted by EPA. She reminded Mr. Gotthold and Ms. Nadolski of the EPA's lack of response to the FOIA request submitted in June.

[Ms. Hill again requested a copy of the risk assessment.](#) Mr. Gotthold stated that this study would be shared with the PaDEP, as they are a colleague. Mr. Porembo questioned if the EPA would share a copy of the report with the Federal elected officials, as they in fact provide oversight of Federal programs. Mr. Gotthold issued a negative response.

[EPA Clarification:](#)

[For clarity, the copies requested by Ms. Hill are the Human Health and Ecological Risk](#)

Assessment Reports for Bernhart Park.

The representatives of DEP stated they were not involved in the development of the work plan. DEP assumed responsibility for monitoring activities taking place at the Exide facility, EPA was charged with developing risk assessment models and proposing a work plan. Mr. Gotthold stated DEP, as a brother agency, was provided copies of all draft documents and given time to provide comment.

Mr. Gotthold stated he would not comment on any assumed dispute between EPA and Exide and deferred any response to Ms. Nadolski. Ms. Nadolski remarked that the disputes were technical in nature, related to various inputs used in generating risk assessment models. The disputes were minor and are well on the way to being resolved.

EPA Clarification:

Mr. Gotthold deferred any response to EPA legal counsels. Ms. Susan Hodges and not Ms. Nadolski replied. The disputes in question were resolved in the EPA Final Decision letter to Exide that states 650 parts per million as the cleanup level for residential properties.

Ms. Hill placed emphasis on the importance of honoring the FOIA request in a timely fashion.

Mr. Collings stated that Exide desires assurances from all parties involved that once a work plan is approved the issues will be settled. Mr. Collings indicated Exide is seeking all involved parties to enter into formal agreement releasing Exide from future liability. Ms. Hill was the first to object to the proposal, stating that if Exide desires to be released from liability than the City of Reading and other parties must entirely satisfied with the level of remediation proposed.

Mr. Collings stated that he heard that the City was considering legal action against Exide. Mr. Waltman stated that someone may have made that suggestion to showcase the need to get this remediation process completed.

Mr. McPhedran noted a [Consent Decree](#) is in place and questioned how Exide could be in a position to either refuse or dictate terms. Mr. McPhedran inquired if EPA would enforce the terms of the [Consent Decree](#). He expressed shock that Exide would expect to be released from liability without the removal of all contamination.

Ms. Nadolski indicated EPA would take action to enforce the [Consent Decree](#); however, she would not discuss specific steps.

Mr. McPhedran asked Mr. Collings if Exide would refuse to adhere to the terms of the [decree](#) in the event any of the involved parties declined to enter into an agreement releasing Exide from liability. Mr. Collings refused to comment, noting any answer would likely be leaked to the press and subsequently taken out of context.

EPA Clarification:

The referenced Consent Decree should be Consent Order.

The meeting was re-opened to the public at this point.

Ms. Goodman-Hinnershitz, noting that the plant is still operating, questioned if any threat of contamination would exist in the future. [Mr. Gottshall](#) replied that contamination is not expected in the future as the company has moved away from out-dated operations.

Mr. Scott questioned if the remediation process will negatively affect the park's vegetation. [Mr. Gottshall](#) replied that disturbance to the park's environment would be minimal.

EPA Clarification:

It's Mr. Gotthold and not Mr. Gottshall.

Ms. Hill stated that at times the EPA uses chemicals to neutralize or remove contamination. Mr. Gotthold replied that that particular application would not be used in Bernhart's Park.

Mr. Gotthold outlined the approach EPA attends to follow:

- Exide will complete the final risk assessment and present this plan to the EPA for review and comment;
- Exide will propose a work plan, which will properly address the issues identified in the final risk assessment;
- EPA will review and approve or amend the plan presented by Exide;
- Once EPA approval is received, Exide will contract to remediate the site per the approved work plan. The project is slated to begin in Spring 2008.

Mr. Scott questioned the ongoing safety and availability of the park lands if a reduced level of remediation is used. Mr. Gajewski strongly stated that it is time for the EPA step up to complete the risk assessment and complete the remediation of this area.

Mr. Gotthold reiterated that the assessment should be finalized in January and the construction process should begin by Spring 2008.

Ms. Hill inquired if DEP has been involved, in any way, with the preparation of the remediation work plan. She also inquired if the EPA plans to include the DEP in the PA Act II liability release. Mr. Collings again inquired about the City and County's intent to file a law suit relating to the cleanup or closure of the park.

Mr. Scott inquired how the EPA will address other contaminants present, noting that one type of remediation cannot address all problems. *Mr. Dao replied that other levels of contamination are not substantial enough to warrant remediation.*

EPA Clarification:

However, Mr. Dao also stated that levels of other contaminants that may pose a health risk concern will be addressed under the soil lead cleanup.

Mr. Scott stated that some areas of Laureldale are heavily contaminated; however, these areas are not slated for cleanup. He cited the example of the Cemetery and the rear portion of the Assisted Living Facility to the north west of the Exide plant.

Ms. Hill questioned if a way of obtaining draft copies of the work plan existed. *Ms. Nadolski suggested Ms. Hill contact Exide. Ms. Nadolski explained that Exide was free to distribute draft material to any party they chose but due to internal policy EPA could not do so.*

EPA Clarification:

Ms. Hodges and not Ms. Nadolski made the suggestion and provided the explanation.

Mr. Waltman suggested that all parties cooperate with the City and County's legal counsel to avoid additional delays. Mr. McPhedran noted that the EPA has been silent on this issue for almost 6 years. He questioned how much longer the silence would have existed if the City had not started making demands

Mr. Collings stated Exide would consider releasing the draft work plan if a compelling reason for doing so could be provided. Mr. Collings did agree to hold discussions with Ms. Hill and Mr. McPhedran to determine what documents could be released.

Another meeting will be scheduled after the upcoming holidays.

Respectfully submitted by

Linda A. Kelleher, City Clerk

Christopher G. Kanezo, Deputy City Clerk